Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 78-28

BARBARA J. SANKO, ET AL.,

Appellants,

vs.

JAN E. CARLSON, ETC.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

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ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the Supreme Court of Illinois, entered on April 3, 1978, reversing the trial court and ordering the dismissal of a suit to declare a state statute unconstitutional, and submit this statement to show that the Supreme Court of the United States has jurisdiction on appeal and that a substantial question is presented.

OPINION BELOW.

The final opinion of the Supreme Court of Illinois in this case is not yet reported. Copies of the final opinion (Appendix C); the original opinion, *Sanko* v. *Carlson*, 69 Ill. 2d 246, 371 N. E. 2d 613 (1977) (Appendix B) and the trial court findings and judgment (Appendix A) are attached hereto.

JURISDICTION.

This suit was brought in declaratory judgment under *Ill. Rev. Stat., Ch. 25,* Sec. 27.1 to have *Ill. Rev. Stat., Ch. 25,* par. 27.1(m) declared unconstitutional. Basing its findings on Plaintiff's Motion for Summary Judgment and supporting affidavits, the trial court held the latter statute unconstitutional and in violation of the Equal Protection and Due Process Clauses of the U. S. and Illinois Constitutions, as alleged by plaintiffs in their complaint and entered judgment on November 24, 1976. A notice of appeal was filed with the Illinois Appellate Court Second District; and the case was transferred to the Illinois Supreme Court. On November 30, 1977, the Illinois Supreme Court issued a decision remanding for more evidence. A petition for rehearing was denied. A motion for clarification was denied. On April 3, 1978, on its own motion, the Illinois Supreme Court modified the opinion and the trial court's judgment was reversed and the case was remanded with direction to dismiss the complaint. A motion for clarification was denied.

Notice of appeal was filed in the Illinois Supreme Court on June 26, 1978.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 United States Code, Sections 1257(2) and 2101(c). The following decision sustains the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *American Oil Co.* v. *Neill,* Idaho (1965), 380 U. S. 451, 85 S. Ct. 1130, 14 L. Ed. 1.

QUESTIONS PRESENTED.

Where the Illinois legislature passes legislation calling for the payment of a nonrecoverable court filing fee of $10.00 per parcel by real estate owners to file tax objections in 101 counties of the state and requires no payment to file such objections

by real estate owners in one county (Cook County), is there a denial of Equal Protection, and where the amount of the nonrecoverable fee bears no relationship to the services performed by the Court Clerks and would often exceed the amount of the recovery per tax bill, does this compel the taxpayers to purchase justice and is it a violation of Due Process under the Fourteenth Amendment to the Constitution of the United States of America?

STATUTES INVOLVED.

Ill. Rev. Stat., Ch. 25, Sec. 27.1 (1976) Vol. 1, pages 1089-1090

> "27.1. The fees of the Clerk of the Circuit Court in all counties having a population of 1,000,000 inhabitants or less shall be paid in advance, except as herein provided, and shall be as follows:
>
> (m) Tax objections
> For each tax bill objected to whenever filed . . . $10.00."

Ill. Rev. Stat., Ch. 25, Sec. 27.2 (1976) Vol. 1, pages 1090-1091

> "27.2. The fees of the Clerk of the Circuit Court in all counties having in excess of 1,000,000 inhabitants in the instances described in this Section shall be as provided in this Section. Such fees shall be paid in advance and shall be as follows:
>
> (14)(a) In cases of any application for judgment for city, county, state, town or other general taxes, there shall be paid to the Clerk, by the corporation so applying for judgment, the sum of 10¢ for each and every tract of land upon which judgment shall be rendered by the court, which sum shall be in full payment for all services to be performed by such clerk in the progress of such suit and upon its commencement to the final determination thereof."

STATEMENT OF THE CASE.

Pursuant to Illinois Senate Bill No. 1560, passed by the Illinois Legislature and signed into law by the Governor on the 30th day of August, 1976, as Public Act 79-1445 (now *Ill. Rev. Stat., Ch. 25*, Sec. 27.1(m)), JAN E. CARLSON, Clerk of the Circuit Court, Sixteenth Judicial Circuit, Kane County, Illinois, instituted a filing fee of $10.00 for each tax bill to which tax objections were being filed. Plaintiffs-Appellants were among more than 100 taxpayers who have paid more than four hundred and seventy 1975 Kane County real estate tax bills under protest. The fee for filing objections is not recoverable against the sovereign. *Ill. Rev. Stat., Ch. 33*, Sec. 17.

On October 12, 1976, Plaintiff-Appellants filed a Complaint for Declaratory Judgment in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois. Following the answer of the Appellee, Appellants filed their Motion for Summary Judgment and affidavits in support thereof. The Court made certain findings and on November 24, 1976, granted Appellants' Motion (see Appendix A). The judgment order declared the Act unconstitutional and commanded that the Appellee accept the tax objections to real estate taxes for 1976 and subsequent years without charging any filing fees.

Appellee appealed to the Appellate Court of Illinois, Second District, on December 1, 1976. On motion of Appellant the cause was transferred to the Illinois Supreme Court on December 21, 1976.

On November 30, 1977, that court issued an opinion which remanded the cause to the trial court for the taking of evidence (Appendix B). Appellants filed a Petition for rehearing which was denied. Appellants filed a motion for clarification which was denied.

Thereafter the Illinois Supreme Court, on its own motion, on April 3, 1978, issued a modified opinion reversing the trial court judgment and directing the trial court to dismiss the Complaint (Appendix C). Appellants filed a motion for clarification which was denied. Appellants have been denied the right to put evidence before the trial court.

The Statute in Question Is Arbitrary and Unreasonable, Discriminates Between Citizens of Illinois, and Denies Plaintiffs Equal Protection of the Law.

Payment of a fee of $10 per parcel to file real estate tax objections in Kane County while no fee is paid in Cook County constitutes an arbitrary and unreasonable discrimination. The prior law, *Ch. 53*, Sec. 31(v), *Ill. Rev. Stat.*, 1975, allowed the Circuit Clerk the right to charge a $5.00 fee to a property owner for filing tax objections regardless of the number of parcels. (No fee at all was charged in Cook County.)

In the past, a property owner in the Kane County portion of the City of Elgin, with ten lots would pay $5.00 to file tax objections to object to the City of Elgin levy. A property owner in the Cook County portion of the City of Elgin who owned ten lots would pay nothing to file tax objections to object to the City of Elgin levy.

The new statute requires the Kane County Elginite to now pay $100.00 (which filing fee is not recoverable, *Ill. Rev. Stat. (1977) Ch. 33*, Sec. 17) on those same ten lots. The Cook County Elginite, however, pays nothing to file his tax objections. The Kane County Elginite might, for instance, get a $50.00 refund in the objection hearings, causing him a net loss of $50.00, while the Cook County Elginite recovers his $50.00 without loss.

Appellee has urged that the need for fees to cover administrative costs of processing real estate tax objections is a proper ground for the enactment of Sec. 27.1(m) of Senate Bill 1560.

The financial report of Appellee's office for 1976 showed a $300,000 profit remitted to the county, a fact of which the trial judge presumably took judicial notice. Appellee further failed to supply any counter-affidavits to the trial court at the time of the motion for summary judgment which would indicate any amount of administrative costs to justify the $10.00 fee per parcel.

The Act complained of, as it applies to the taxpayers of the 101 counties, is on its face arbitrary and unreasonable.

The equal protection clauses of both the Illinois and United States Constitutions prohibit invidious discrimination, and the classification of class I and class II counties in said law upon the basis of population, and no other basis, is unreasonable and arbitrary and denies equal protection to these citizens of Illinois.

The Fees to Be Imposed Under Section 27.1(m) Would Force Citizens to Purchase Justice and Are in Violation of Due Process of Law.

Taxpayers in Illinois must pay all of their taxes under protest as a condition precedent to filing tax objections. *Ill. Rev. Stat., Ch. 120,* Sec. 675, et seq.

Payment under protest and subsequent filing of objections to the Treasurer's suit for judgment on the tax rolls (tax objections) is the only statutory remedy by which a taxpayer can recover an illegally collected tax. The Illinois Legislature instituted this remedy in 1933 to eliminate a burdensome variety of suits in equity and at law by which taxpayers had sought relief from illegal levies. *Clarendon Associates* v. *Korzen,* 56 Ill. 2d 101, 306 N. E. 2d 299. The procedure was designed by the Legislature to be a simple, expedient, and inexpensive means by which taxpayers might challenge illegal taxation.

If the taxes collected are illegal and if the tax objectors cannot afford the filing fee to recover their property which was illegally taken, the objectors are deprived of property without due process because they cannot afford to purchase justice.

The Legislature grants taxpayers the right to file objections to taxes. *Ill. Rev. Stat., Ch. 120,* Sec. 675 et seq. The Legislature cannot impose an unreasonable fee upon said right. In *People ex rel. Christianson* v. *Connell,* 2 Ill. 2d 332 at 342, 118 N. E. 2d 262 at 266, the court said:

> "It by no means follows, however, that because the origin of the right or privilege is legislative there are no constitutional restrictions on the type of legislation which may be enacted regulating the exercise of the right. Once the matter has been committed to the judiciary, the parties to such judicial proceedings are clearly entitled to the same constitutional safeguards as are parties to other judicial proceedings. The fact that the legislature might entirely abolish the right of access to the courts for purposes of divorce and annulment does not imply the power to make the exercise of those rights conditional upon a surrender of constitutional guarantees. Thus, for example, were the legislature to pass a law conditioning the right to petition for a divorce upon the payment of a fee of $1000, such a law would, we believe, clearly contravene the very section of our constitution now being considered as amounting to a compulsory purchase of justice. (See *Wilson* v. *McKenna,* 52 Ill. 43.) The Supreme Court of the United States has frequently announced the rule that a State may not attach unconstitutional conditions to the exercise of a right even though the right itself exists entirely at the pleasure of the State. (*Power Mfg. Co.* v. *Saunders,* 274 U.S. 490; *Hanover Fire Ins. Co.* v. *Carr,* 272 U.S. 494; *Frost & Frost Trucking Co.* v. *Railroad Commission,* 271 U.S. 583; *Terral* v. *Burke Construction Co.,* 257 U.S. 529)."

The fee is excessive in relation to the services rendered by the Clerk and would often exceed the amount of illegal taxes to be recovered per parcel.

THE QUESTIONS ARE SUBSTANTIAL.

In *American Oil Co.* v. *Neill,* Idaho (1965) 380 U. S. 451, 85 S. Ct. 1130, 14 L. E. 2d 1, a trial judge granted summary

judgment for refund of motor fuel taxes on the ground that the tax violated the Due Process and Commerce Clauses as applied to a sale made outside of Idaho. The Idaho Supreme Court reversed, finding the constitutional objections to be without merit. The U. S. Supreme Court took jurisdiction pursuant to 28 U. S. C., Sec. 1257(2), found that the tax violated the Due Process Clause, and reversed the Idaho Supreme Court. The Illinois Fee Statute being challenged has been ruled unconstitutional by the trial court on the ground it violated the Due Process Clause and the Equal Protection Clause. The Illinois Supreme Court reversed the trial court.

The discriminatory fees charged under the challenged statute in 101 of the 102 counties in Illinois are important to the taxpayers in the 101 counties that are required to pay said fee. The Plaintiffs are denied Due Process by being required to pay arbitrary, often prohibitive, fees to recover illegal taxes already collected from them. Payment of the fee is required in the only procedure allowed by the State of Illinois to recover illegal taxes already collected from taxpayers.

Appellants concede that States may classify on the basis of population where the classification is based upon a rational difference of situation or condition. The classification must have a reasonable basis when considered with reference to the purpose of the legislation. The Act being challenged classifies by population without a rational basis for such classification and violates the Equal Protection Clause.

It is submitted that the Illinois Supreme Court erred in upholding the Fee Statute in Question, that the issues of classification by population without a rational basis as a violation of the Equal Protection Clause, and compelling purchase of justice as a violation of the Due Process clause, are substantial and that they are of public importance.

Respectfully submitted,

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Attorneys for Appellants.

APPENDIX A.

STATE OF ILLINOIS } ss.
COUNTY OF KANE }

BARBARA J. SANKO, ET AL.,
Plaintiffs,
vs.
JAN E. CARLSON, ETC.,
Defendants.
} Gen. No. 76 MR 10542

ORDER.

This cause coming to be heard on Plaintiff's Motion for Summary Judgment, on their complaint for Declaratory Judgment, Affidavits in support thereof of Plaintiff's having been filed, and answer of Kane County's State's Attorney having been filed, the court having heard arguments of counsel and being fully advised in the premises;

The Court Finds:

1. These Plaintiff's are among more than 100 taxpayers who have paid more than 420 1975 tax bills under protest and these plaintiff's have standing in this action and court;

2. This Court has jurisdiction of the parties and subject matters;

3. The Court finds Illinois Senate Bill 1560, Sec. XXX 27.1(m) is a) arbitrary, b) unreasonable, c) in correlation with Sec. 27.2(14)(a) is a Denial of Equal Protection and is Special Legislation, d) that it violates the due process clause of the Illinois and Federal Constitutions, e) Sec. 9a of the 1970 Illinois Constitution, f) that said fees to be imposed by said section bear no reasonable relation to the services to be pro-

vided by the Circuit Clerk, g) that said fees to be imposed under Sec. 27.1(m) would force many citizens to purchase justice in contravention of Article 1 Sec. .12 of the 1970 Illinois Constitution, h) that said costs can not be recovered from the sovereign under IRS, Chapter 33, Section 17 and the unrecoverable filing costs would far exceed potential recoveries by many taxpayers and effectively bar them from tax objection proceedings and deny them their remedy.

WHEREFORE IT IS ORDERED:

1. That Section 27.1(m) of Senate Bill 1560 is hereby declared unconstitutional.

2. That the Circuit Clerk of Kane County is ordered and commanded to accept tax objections to Real Estate Taxes for 1975 and subsequent years without charging filing fees as required by Sec. 27.1(m) of Illinois Revised Statutes Chapter 25.

/s/ (Illegible)
Judge.

Dated: November 24, 1976.

APPENDIX B.

Docket No. 49138—Agenda 74—May 1977.
BARBARA J. SANKO *et al.*, Appellees, v. JAN E. CARLSON, Appellant.

MR. JUSTICE DOOLEY delivered the opinion of the court:

Plaintiffs, Barbara J. Sanko, Shirley Cook, Boyd L. Gates, John P. Callahan, Maywood-Proviso State Bank, and Dundee Landscape Nursery, Inc., brought suit against defendant, Jan E. Carlson, the clerk of the Kane County circuit court, for a declaratory judgment that section 27.1(m) of "An Act to revise the law in relation to clerks of courts" (the Act), added by Public Act 79-1445, effective September 30, 1976 (Ill. Rev. Stat., 1976 Supp., ch. 25, par. 27.1(m)), was unconstitutional. The trial court entered summary judgment for plaintiffs, defendant appealed, and the appeal was transferred here under Rule 302(a) (58 Ill. 2d R. 302(a)), providing for a direct appeal to this court in cases in which a statute has been held invalid.

Section 27.1 establishes a schedule of fees to be charged by the clerk of the circuit court in counties having a population of 1 million or less. Section 27.1(m) provides that the fee for tax objections shall be $10 for each tax bill objected to. Previous to the enactment of Public Act 79-1445, the fee for tax objections was $5 "[f]or each paper containing one or more Tax Objections, whenever filed." Ill. Rev. Stat. 1975, ch. 53, par. 31(V).

The fees to be charged by the clerk of the circuit court in counties having a population of over 1 million inhabitants are set out in section 27.2 of the Act (Ill. Rev. Stat., 1976 Supp., ch. 25, par. 27.2). That section imposes no fee for filing tax objections.

The question for decision is the constitutionality of the statute imposing fees for filing tax objections in counties with a population of 1 million or less, while there is no fee exacted for this purpose in counties having a population of over 1 million.

The complaint filed on October 12, 1975, alleged that each of the plaintiffs paid real estate or personal property tax bills for the year 1975 on property in Kane County, whose population is not over 1 million. It does not allege that plaintiffs had already filed objections to the taxes for which they were billed or that they had been prevented from doing so without tendering the fee which would be due under section 27.1.

Plaintiffs' motion for summary judgment was accompanied with an affidavit by plaintiff Sanko alleging that she had paid taxes, under protest, on two parcels of land, and that her financial situation would require her to sell one of them if she were required to pay the $20 fee.

The principal basis for plaintiffs' charge of unconstitutionality is that section 27.1(m) discriminates against taxpayers in counties having a population of 1 million or less and in favor of residents of counties with a population exceeding 1 million. This classification is said to violate article IV, section 13, of the Illinois Constitution, which forbids special or local laws, and the equal protection clauses of the Illinois and Federal constitutions. In essence, plaintiff's position is that if residents of Cook County need not pay a filing fee, residents of Kane County are entitled to the same treatment.

Plaintiffs also contend that the statute in question violates article I, section 12, of the Illinois Constitution, which states in part that every person "shall obtain justice by law, freely."

At the outset we consider the claim that section 27.1(m) violates the right to obtain justice freely. Our decisions upholding the imposition of a fee when trial by jury is demanded are dispositive of this argument. In *People ex rel. Flanagan* v. *McDonough* (1962), 24 Ill. 2d 178, we upheld the validity of a jury fee against the charge that it violated article II, section

19, of the Constitution of 1870, the predecessor of the present article I, section 12, *Williams* v. *Gottschalk* (1907), 231 Ill. 175, and *Morrison Hotel & Restaurant Co.* v. *Kirsner* (1910), 245 Ill. 431, held that jury fees did not violate the constitutional right to trial by jury. In *Williams* this court quoted with approval the following statement made by the Supreme Court of Minnesota:

> " 'We can see no valid objection to a reasonable fee of this kind. The constitution does not guarantee to the citizen the right to litigate without expense, but simply protects him from the imposition of such terms as unreasonably and injuriously intefere with his right to a remedy in the law or impede the due administration of justice; and that a party who demands a trial by jury should be required to advance a small jury fee, whether it is considered as a tax on litigation or as a part of the expense which is necessarily incurred in his behalf, seems no more liable to a constitutional objection than is the requirement that the fees of the clerk, sheriff and other officers shall be paid in advance when demanded. If the clause in the constitution means that we shall be permitted to litigate literally "without price," there is an end to all fees, from the issuing of summons to the entry of satisfaction of the judgment.' " 231 Ill. 175, 179.

So also legislation requiring payment of a filing fee to support a county law library was found valid. (*Ali* v. *Danaher* (1970), 47 Ill. 2d 231.) The principle underlying these cases is that the right to obtain justice does not mean that litigation may be conducted free of reasonable fees. That same principle obtains here.

We come then to plaintiffs' contention that section 27.1 is a denial of equal protection and that it is special legislation. The question raised by these two constitutional claims is essentially the same: Is a statutory classification on the basis of population rational? (*Christen* v. *County of Winnebago* (1966), 34 Ill. 2d 617, 619.) Our inquiry proceeds on the premise that a statutory classification is presumed to be valid, and that plain-

tiffs have the burden of showing that it is unreasonable. (*Ali* v. *Danaher* (1970), 47 Ill. 2d 231, 239.) We note at the outset that the classification of counties by population for the purpose of jury fees has withstood challenge. (See *Fried* v. *Danaher* (1970), 46 Ill. 2d 475; *Hunt* v. *Rosenbaum Grain Corp.* (1934), 355 Ill. 505.) In *Rosenbaum* the population classification meant that only in Cook County were fees required for a jury trial. On that point the court made the following observations:

> "The population of Cook county is approximately four million. The volume of business in its circuit and superior courts is so large that it requires the services of forty-eight judges elected from that county and the assistance of numerous outside judges. * * * We must recognize that court conditions in very populous counties require special consideration and treatment." 355 Ill. 505, 510-11.

So far as this record shows, there may well be a rational connection between the populations of different counties and the size of the fees for filing tax objections. In counties having more than 1 million inhabitants, a fee is paid by each taxing body on each tract of land as to which an application for judgment has been made. (Ill. Rev. Stat., 1976 Supp., ch. 25, par. 27.2(14)(a).) Plaintiffs have not shown that the legislature could not have deemed such a method of financing the cost of tax collections as appropriate for a county where the number of parcels of land and of tax objections may far exceed the corresponding figures for smaller counties.

On the record before us here, we conclude that plaintiffs were not entitled to summary judgment. The judgment of the circuit court is accordingly reversed, and the cause is remanded with directions to deny the motion for summary judgment, and to proceed in a manner not inconsistent with this opinion.

Reversed and remanded,
with directions.

APPENDIX C.

Docket No. 49138—Agenda 74—May 1977.

BARBARA J. SANKO *et al.*, Appellees, v.
JAN E. CARLSON, Appellant.

MR. JUSTICE DOOLEY delivered the opinion of the court:

Plaintiffs, Barbara J. Sanko, Shirley Cook, Boyd L. Gates, John P. Callahan, Maywood-Proviso State Bank, and Dundee Landscape Nursery, Inc., brought suit against defendant, Jan E. Carlson, the clerk of the Kane County circuit court, for a declaratory judgment that section 27.1(m) of "An Act to revise the law in relation to clerks of courts" (the Act), added by Public Act 79-1445, effective September 30, 1975 (Ill. Rev. Stat., 1976 Supp., ch. 25, par. 27.1(m)), was unconstitutional. The trial court entered summary judgment for plaintiffs, defendant appealed, and the appeal was transferred here under Rule 302(a) (58 Ill. 2d R. 302(a)), providing for a direct appeal to this court in cases in which a statute has been held invalid.

Section 27.1 establishes a schedule of fees to be charged by the clerk of the circuit court in counties having a population of 1 million or less. Section 27.1(m) provides that the fee for tax objections shall be $10 for each tax bill objected to. Previous to the enactment of Public Act 79-1445, the fee for tax objections was $5 "[f]or each paper containing one or more Tax Objections, whenever filed." Ill. Rev. Stat. 1975, ch. 53, par. 31(V).

The fees to be charged by the clerk of the circuit court in counties having a population of over 1 million inhabitants are set out in section 27.2 of the Act (Ill. Rev. Stat., 1976 Supp., ch. 25, par. 27.2). That section imposes no fee for filing tax objections.

The question for decision is the constitutionality of the statute imposing fees for filing tax objections in counties with a population of 1 million or less, while there is no fee exacted for this purpose in counties having a population of over 1 million.

The complaint filed on October 12, 1975, alleged that each of the plaintiffs paid real estate or personal property tax bills for the year 1975 on property in Kane County, whose population is not over 1 million. It does not allege that plaintiffs had already filed objections to the taxes for which they were billed or that they had been prevented from doing so without tendering the fee which would be due under section 27.1.

Plaintiffs' motion for summary judgment was accompanied with an affidavit by plaintiff Sanko alleging that she had paid taxes, under protest, on two parcels of land, and that her financial situation would require her to sell one of them if she were required to pay the $20 fee.

The principal basis for plaintiffs' charge of unconstitutionality is that section 27.1(m) discriminates against taxpayers in counties having a population of 1 million or less and in favor of residents of counties with a population exceeding 1 million. This classification is said to violate article IV, section 13, of the Illinois Constitution, which forbids special or local laws, and the equal protection clauses of the Illinois and Federal constitutions. In essence, plaintiffs' position is that if residents of Cook County need not pay a filing fee, residents of Kane County are entitled to the same treatment.

Plaintiffs contend that the statute in question violates article VII, section 9(a), of the Illinois Constitution, an argument in which we find no merit. It is also urged that the statute contravenes article I, section 12, of the Constitution, which states in part that every person "shall obtain justice by law, freely."

At the outset we consider the claim that section 27.1(m) violates the right to obtain justice freely. Our decisions upholding the imposition of a fee when trial by jury is demanded are

dispositive of this argument. In *People ex rel. Flanagan* v. *McDonough* (1962), 24 Ill. 2d 178, we upheld the validity of a jury fee against the charge that it violated article II, section 19, of the Constitution of 1870, the predecessor of the present article I, section 12. *Williams* v. *Gottschalk* (1907), 231 Ill. 175, and *Morrison Hotel & Restaurant Co.* v. *Kirsner* (1910), 245 Ill. 431, held that jury fees did not violate the constitutional right to trial by jury. In *Williams* this court quoted with approval the following statement made by the Supreme Court of Minnesota:

> " 'We can see no valid objection to a reasonable fee of this kind. The constitution does not guarantee to the citizen the right to litigate without expense, but simply protects him from the imposition of such terms as unreasonably and injuriously interfere with his right to a remedy in the law or impede the due administration of justice; and that a party who demands a trial by jury should be required to advance a small jury fee, whether it is considered as a tax on litigation or as a part of the expense which is necessarily incurred in his behalf, seems no more liable to a constitutional objection than is the requirement that the fees of the clerk, sheriff and other officers shall be paid in advance when demanded. If the clause in the constitution means that we shall be permitted to litigate literally "without price," there is an end to all fees, from the issuing of summons to the entry of satisfaction of the judgment.' " 231 Ill. 175, 179.

So also legislation requiring payment of a filing fee to support a county law library was found valid. (*Ali* v. *Danaher* (1970), 47 Ill. 2d 231.) The principle underlying these cases is that the right to obtain justice does not mean that litigation may be conducted free of reasonable fees. That same principle obtains here.

We come then to plaintiffs' contention that section 27.1 is a denial of equal protection and that it is special legislation. The question raised by these two constitutional claims is essentially the same: Is a statutory classification on the basis of

population rational? (*Christen* v. *County of Winnebago* (1966), 34 Ill. 2d 617, 619.) Our inquiry proceeds on the premise that a statutory classification is presumed to be valid, and that plaintiffs have the burden of showing that it is unreasonable. (*Ali* v. *Danaher* (1970), 47 Ill. 2d 231, 239.) We note at the outset that the classification of counties by population for the purpose of jury fees has withstood challenge. (See *Fried* v. *Danaher* (1970), 46 Ill. 2d 475; *Hunt* v. *Rosenbaum Grain Corp.* (1934), 355 Ill. 505.) In *Rosenbaum* the population classification meant that only in Cook County were fees required for a jury trial. On that point the court made the following observations:

> "The population of Cook county is approximately four million. The volume of business in its circuit and superior courts is so large that it requires the services of forty-eight judges elected from that county and the assistance of numerous outside judges. * * * We must recognize that court conditions in very populous counties require special consideration and treatment." 355 Ill. 505, 510-11.

So far as this record shows, ". . . *there may well be a rational connection between the populations of different counties and the size of the fees for filing tax objections.*" In counties having more than 1 million inhabitants, a fee is paid by each taxing body on each tract of land as to which an application for judgment has been made. (Ill. Rev. Stat., 1976 Supp., ch. 25, par. 27.2(14)(a).) Plaintiffs have not shown that the legislature could not have deemed such a method of financing the cost of tax collections as appropriate for a county where the number of parcels of land and of tax objections may far exceed the corresponding figures for smaller counties.

On the record before us here, we conclude that plaintiffs were not entitled to summary judgment. For the reasons expressed herein, the judgment of the circuit court is reversed and the cause remanded with directions to dismiss the complaint.

Reversed and remanded, with directions.

APPENDIX D.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

BARBARA J. SANKO, SHIRLEY COOK, BOYD L. GATES, JOHN P. CALLAHAN, MAYWOOD-PROVISO STATE BANK TRUST No. 1565, and DUNDEE LANDSCAPE NURSERY, INC., *Plaintiffs-Appellees,* *vs.* JAN E. CARLSON, Clerk of the Circuit Court, Sixteenth Judicial Circuit, Kane County, Illinois, *Defendant-Appellant.*	No. 59138

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

Notice is hereby given that Barbara J. Sanko, Shirley Cook, Boyd L. Gates, John P. Callahan, Maywood-Proviso State Bank Trust No. 1565, and Dundee Landscape Nursery, Inc., plaintiff-appellees above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois, reversing the Order of the Trial Court which found the statute in question unconstitutional, and remanding the cause to the Trial Court with direction to dismiss in this action on April 3, 1978.

This appeal is taken pursuant to 28 U. S. C. Sections 1257(2) and 2101(c).

/s/ BOYD L. GATES
Boyd L. Gates
Attorney for Appellants in U. S. Supreme Court

Received three copies of this notice of appeal on June 26, 1978:

Clell Woods, Clerk of the Supreme Court of Illinois
By: /s/ HAROLD T. SELLERS

Loren Strotz, Clerk of the Appellate Court of Illinois—Second District
By: /s/ LOREN J. STROTZ

Jan E. Carlson, Clerk of the 16th Judicial Circuit, Kane County, Illinois
By: /s/ JAN CARLSON

William Scott, Attorney General, State of Illinois
By: /s/ ILLEGIBLE

Eugene Armentrout, States Attorney for Kane County, Illinois
By: /s/ EUGENE ARMENTROUT

I hereby certify that on this 26th day of June, 1978, three copies of the within notice of appeal were served on the above persons. I further certify that all parties required to be served have been served.

/s/ BOYD L. GATES
Boyd L. Gates
25 N. Western Avenue
Carpentersville, Illinois 60110
Counsel for Petitioner